

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-269

In re Applications of

OPAL CHADWELL File No. BPCT-850103KK

DOROTHY O. SCHULZE File No. BPCT-850320KG
and DEBORAH BRIGHAM,
A General Partnership

BLANCO File No. BPCT-850320LC
COMMUNICATIONS
LTD.

For a Construction Permit
for a New Television
Station at Blanco, Texas

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 1989; Released: January 31, 1989

By the Commission:

1. Before the Commission are: (1) Applications for Review filed October 13, 1987 by Blanco Communications, Ltd. and Dorothy O. Schulze and Deborah Brigham, a General Partnership; (2) an opposition filed October 29, 1987 by Opal Chadwell. These pleadings relate to a decision of the Review Board granting Chadwell's application for a new UHF television station on channel 52 in Blanco, Texas and denying the mutually exclusive applications of Blanco and Schulze-Brigham. *Opal Chadwell*, 2 FCC Rcd 5502 (Rev. Bd. 1987).

2. We find no error in the Board's treatment of the existing record in this case. However, we conclude that unresolved questions exist concerning Chadwell's financial qualifications. We therefore add an appropriate issue and remand for further hearings.

I. BACKGROUND

3. In her application, Chadwell certified that she had sufficient liquid assets and committed funds to construct and operate her proposed station for three months. Blanco petitioned the ALJ to add a financial issue against Chadwell based, in part, on statements by her that allegedly indicate that she lacked sufficient funds. The ALJ denied Blanco's petition. FCC 86M-296 (Jan. 23, 1986). Blanco reiterated and supplemented its arguments in its exceptions to the ALJ's initial decision. At the oral argument before the Review Board, Chadwell's attorney after being questioned by Board members about the source of Chadwell's funds, agreed to provide further

documentation. Tr. at 2489-90. The Board then issued an order requesting the promised documentation. *Opal Chadwell*, 2 FCC Rcd 2981 (Rev. Bd. 1987).

4. Chadwell responded that she had available funds of 1,423,403 to cover estimated costs of 1,412,390. Opal Chadwell Financial Documentation filed June 9, 1987. These funds include (in addition to 217,087 in liquid assets) 646,316 representing her equity in Blanco Cablevision, Inc. (as 79.4 percent owner) and 560,000 representing her interest in approximately 45 acres of real estate in Hayes County, Texas (her homestead). Chadwell proffered a sworn statement by T.F. Burger, Jr., as president of U.S. Television Systems, Inc., offering to purchase Blanco Cablevision, Inc. for 814,000 and a sworn statement by Georgia Dixon the co-owner of Swim-Spa of Texas offering to purchase the 45 acres of real estate for 560,000. The Board held that Chadwell's documentation demonstrated that she had access to the necessary funds. 2 FCC Rcd at 5511 ¶ 39.

II. PLEADINGS

5. In its application for review, Blanco argued that Chadwell's showing does not conform to Commission policy. Blanco contended that where an applicant relies on non-liquid assets, such as real estate, the applicant must: (1) show that the assets have a value several times that of the funds needed; and (2) support the showing with a valid appraisal. Blanco contended that an offer is not the equivalent of a valid appraisal and accused the Board of arbitrarily rejecting Blanco's counter-appraisals. Additionally, Blanco also asserted that U.S. Television and Swim-Spa should be required to furnish financial statements documenting their ability to make the proposed purchases.

6. In response to Blanco's arguments, the Commission's General Counsel, under delegated authority, requested Chadwell to furnish further documentation of her financial qualifications. FCC 88I-045 (May 5, 1988). The General Counsel noted that the Commission permits an applicant to rely on illiquid assets, such as real estate, where the applicant furnishes a relevant appraisal of the property. *Christian Children's Network, Inc.*, 101 FCC 2d 612, 614 ¶ 5 (1985). Although the General Counsel believed that in some circumstances it might be reasonable to accept offers, such as those proffered by Chadwell, as adequate substitutes for appraisals -- especially where the claimed value of the property was several times that of the funds required -- this might not be the case here. Thus, the General Counsel suggested that Chadwell furnish either a formal appraisal of her real estate and cable system or documentation giving further assurance that the U.S. Television and Swim-Spa offers can be effectuated.

7. Chadwell submitted further financial documentation on June 27, 1988. An appraisal by Jim McCrocklin, a real estate broker and appraiser, indicates that Chadwell's Hayes County property had a market value of 408,000 as of October 1, 1984 (Chadwell certified her financial qualifications on December 2, 1984), consisting of 315,000 for the land and 93,000 for Chadwell's house and other improvements. A separate estimate by Ray T. Johnson of Quality Stoneworks indicates that the property contains commercially valuable limestone worth in excess of 150,000. According to Chadwell, these documents, therefore, indicate a total value of 558,000. Chadwell also submitted an appraisal of Blanco Cablevision by Commu-

nications Marketing Group, Inc., showing a value of 600,000 to 650,000. Additionally, Chadwell submitted a separate appraisal of real estate associated with the cable system, by Thomas R. Gardner and Glenn A. Walters, real estate appraisers and consultants. This appraisal sets the value of the real estate at 195,000, making the total appraised value of the cable system and associated property 795,000 to 845,000.

8. Chadwell also submitted a letter from Thompson-Kent Financial, Inc. expressing the opinion that approximately 1.2 million in credit could be provided in the form of a 60-month equipment lease arrangement. According to Thompson-Kent, the arrangement would involve payments of 30,000 per month and a deposit of 60,000. Based on this proposal and a list of estimated costs, Chadwell states that her construction and operating costs for the first three months would be 395,000 (that is, 150,000 in lease payments, 50,000 installation and engineering fees, and 195,350 operating expenses).

9. Blanco and Schulze-Brigham dispute the validity of Chadwell's showing in pleadings filed August 10, 1988. Blanco submits a counter-appraisal of Chadwell's Hayes County property by Steven L. Adams, a real estate broker and appraiser. Adams estimates the value of the property as of October 1984 to be only 175,000 (144,000 for the land and 31,000 for the improvements). Adams does not believe that the limestone present on the property increases its market value. Blanco also points out that, according to 1988 Texas tax records, Chadwell's property currently has an assessed value of less than 200,000. Blanco also presents a counter-appraisal of the cable system by Jamar & Associates indicating a value of 300,000 to 375,000.

10. Chadwell's opponents contend that she is not financially qualified and that she falsely certified that she was. They point out that Chadwell provided no further information to support the good faith of the Swim-Spa and U.S. Television offers and assert that these offers were made merely to accommodate Chadwell, rather than as serious offers, because they are grossly disproportionate to the true market value of the properties. They maintain that the true value of the assets would be insufficient to meet Chadwell's estimated costs. The opponents further maintain that throughout this proceeding Chadwell has lacked candor in attempting to establish her financial qualifications.

11. Chadwell replies, in an August 22, 1988 pleading, that the information provided by Blanco is false and misleading. (We find that there is good cause to consider this pleading, although it was not authorized by the General Counsel's order, in view of the substantial new matters raised in Blanco's responsive pleading.)¹ Chadwell asserts that Jamar & Associates, which appraised the cable system for Blanco at 300,000 to 375,000, previously represented to Chadwell in an October 2, 1987 letter that the system could be sold for 500,000 to 600,000. Chadwell also asserts that it is unremarkable that appraisals of the system by different appraisers reach different conclusions, especially because Jamar did not inspect the system first-hand.

12. As to the Hayes County property, Chadwell contends that Adams' appraisal mischaracterizes Chadwell's residence as a mobile home. According to Chadwell, the structure is actually a rock and frame house worth several times the value of a mobile home. Moreover, Chadwell claims that the mobile home previously occupying the

site was replaced in 1983-84, before Chadwell filed her application. She also reiterates her claim that there is no significance to the disparate results reached by the McCrocklin and Adams appraisals, especially because Adams did not conduct a thorough first-hand inspection of the property.

13. More generally, Chadwell denies that she has had no fixed financial proposal. She relates that when she certified that she was financially qualified she relied on the value of her assets, as indicated by the two offers. She maintains that because she had the offers she had no need to obtain appraisals until the Commission requested them. She further maintains that her proffer of the Thompson-Kent leasing proposal is consistent with her original plans, because she always intended to borrow funds or lease equipment to conserve her assets.

14. In an August 31, 1988 response, Blanco reaffirms its evaluation of Chadwell's house and cable system. Blanco tenders a sworn declaration from Jamar indicating that the 500,000 to 600,000 figure previously quoted to Chadwell included the value of real estate associated with the cable system. Jamar also states that the figure was an "off the top of the head" opinion and not a formal appraisal. Blanco also proffers additional tax records to support its argument that Chadwell's house is indeed a mobile home and that it is smaller and less valuable than Chadwell claims.

III. DISCUSSION

15. We believe that the record before us raises substantial questions as to Chadwell's financial qualifications. We therefore designate an appropriate issue and remand this proceeding for further hearings.

16. Substantial questions exist concerning the amount of money that Chadwell can expect to realize from the sale of her Hayes County homestead. To begin with, the 558,000 claimed by Chadwell is inadequately justified to the extent that it attributes 150,000 to the value of stone present on the property. The fact that a quantity of stone is present on the property does not necessarily imply that it enhances the market value of the property by a like amount. Chadwell's own appraisal characterizes the highest and best use of the property as "residential and recreational use;" it assigns a value per acre to the land based on that assumption and does not attempt to place any value on the presence of the stone. Response to Commission Order filed June 27, 1988 by Chadwell, Exh. A at unnumbered pp. 19, 23. Chadwell has not reconciled her attempt to attribute market value to the property as a quarry site with the apparently conflicting assumptions underlying her formal appraisal. Chadwell has the burden of demonstrating that the value of her property is supported by an appraisal based on consistent and realistic assumptions. That is, she cannot attribute a value to the approximately 15 acres of land containing the stone, based on residential and recreational use, and simply assume that this value would be increased because the stone could be quarried. Chadwell has the burden of demonstrating the basis for such an assumption.

17. As the other parties point out, several factors would have to be examined to judge what value a buyer of the land might attribute to the stone's presence, such as (1) whether the stone is commonly present on other property in the area, (2) whether there is a ready market for the stone, and (3) the cost of extracting and transporting the

stone. See Opposition to Response to Commission Order filed August 10, 1988 by Blanco, Att. D at 2-3. See also Comments on Financial Documentation filed June 29, 1987 by Blanco, Exh. 2 at 1. Johnson's statement does not take factors such as these into account and does not provide a basis for evaluating the impact that the presence of the stone would have on the market value of the land. Thus, we cannot give credence to Chadwell's attempt to add the value of the stone to the appraised value of the land.

18. In addition, Blanco has supplied information indicating that the market value of the property may be only about 3300 per acre rather than the 7000 found by Chadwell's appraiser. Although Blanco's appraiser appears to have had less opportunity to inspect the property than did Chadwell's appraiser, the record provides no firm basis to reject his analysis in favor of Chadwell's. Moreover, Blanco has also supplied corroborating evidence consistent with its lower appraisal -- although this may be of lesser probative value. In addition to the tax assessment (which may or may not reflect full market value), Blanco has supplied a sworn declaration by Rev. Samuel A. Greene, Jr., stating that in 1983 or 1984 Earl Chadwell attempted to exchange the homestead for property then listed at only about 200,000. We cannot evaluate Rev. Greene's credibility on the record before us. The factors set forth in this and the preceding paragraphs suggest that Chadwell's homestead may have a market value considerably less than Chadwell proposes. Similarly, the tax records submitted by Blanco raise questions about the character of her house.

19. Additional questions arise concerning the value of the cable system. Chadwell's appraiser states that the appraised value for the system of 600,000 to 650,000 is based on a cash flow study, the condition of plant and equipment, and the current demand level for cable systems. Response to Commission Order, Exh. C at 1. However, the appraisal provides no computations or comparative sales that could be examined to confirm the validity of the proposed evaluation. On the other hand, the record contains statements by three brokers indicating that it would be unlikely for a cable system such as the Chadwell's to have a market value of more than 2000 per subscriber, if that much. Opposition to Response to Commission Order, Att. H at 2 (Jamar & Associates); Comments on Financial Documentation, Exh. 1 (Norman Fischer & Associates, Inc.); Supplement to Comments of Dorothy O. Schulze and Deborah Brigham [on] Opal Chadwell's Financial Documentation, filed June 30, 1987, Exh. 4 at 1 (Barry Sherman & Associates, Inc.) In 1984, the Blanco cable system had no more than 240 subscribers (TV & Cable Factbook No. 55 at B-1010), suggesting a maximum value of less than 500,000 and possibly much less. We cannot resolve this discrepancy on the present record. We also note that Blanco has provided a sworn declaration by Eddie Cortez stating that sometime between 1985 and 1987 Chadwell offered to sell the cable system to a third party for 300,000. However, the value of this statement may be diminished by the fact that Cortez appears to be a disgruntled former employee.

20. On remand the ALJ should determine whether -- at the time Chadwell certified her financial qualifications -- she had available sufficient assets to meet her 1,412,390 in estimated costs. The ALJ may also consider whether the record developed on remand indicates that Chadwell submitted the Swim-Spa and U.S. Television in bad faith or

whether Chadwell otherwise lacked candor in asserting the value of her assets. If the record so indicates, the ALJ could add an appropriate issue. Alternatively, the ALJ might determine that -- in light of the record developed on remand -- Chadwell has been diligent in attempting to establish her financial qualifications. He might therefore find that there is good cause to permit Chadwell to rely on her equipment leasing proposal and resolve the financial issue on that basis. In this regard, the ALJ would have to examine Chadwell's original proposal to determine whether she had a reasonable basis for making it. See *Pepper Schultz*, 2 FCC Rcd 1476 ¶¶ 3-4 (1987), recon. granted on other grounds, 3 FCC Rcd 1200 (1988). We are not, by these observations, prejudging the record that will be developed on remand. We mean only to make clear that we do not intend to limit the ALJ's discretion to take appropriate action as warranted by further evidence.

21. Similarly, as Blanco points out, other issues in this proceeding, concerning Chadwell's transmitter site, involve questions of Chadwell's credibility. We see no basis on the present record developed under those issues to modify the conclusions of the ALJ and the Review Board. However, if the record on remand indicates that Chadwell has falsely certified her financial qualifications or has lacked candor, this may reflect on her credibility under other issues and the ALJ might reconsider his findings if appropriate. Again, however, we emphasize that we are not prejudging this matter, but merely indicating that the ALJ has the discretion to act if circumstances warrant. Consequently, we reserve final judgment on these issues pending any further relevant action by the ALJ.

IV. ORDERS

22. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.115(g) the Application for Review filed October 13, 1987 by Dorothy O. Schulze and Deborah Brigham, a General Partnership, IS DENIED.

23. IT IS FURTHER ORDERED, That the Application for Review filed October 13, 1987 by Blanco Communications, Ltd. IS GRANTED to the extent that it raises questions about Opal Chadwell's financial qualifications and otherwise IS DENIED subject to any further findings and conclusions that the ALJ may deem appropriate under issues (2) and (3) of this proceeding.

24. IT IS FURTHER ORDERED, That this proceeding IS REMANDED for further hearings on the following issue:

To determine whether Opal Chadwell has sufficient funds to meet her estimated costs of construction and operation.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

¹ As Blanco notes, the Commission's Office of General Counsel suggested to Chadwell's counsel -- in response to her inquiry -- that any reply should be accompanied by a request for leave to file. Blanco contends that this contact with the Commission violated our ex parte rules. The rules, however, do not prohibit a person from seeking advice concerning compliance with procedural requirements. *Amendment of Subpart H, Part 1 etc.*, 2 FCC Rcd 3011, 3013 ¶ 15 (1987).